

REMARKS

First, the Examiner rejected Claims 1-27 under the judicially created doctrine of obviousness type double patenting. In response, applicants aver that an assignment of the present application to C-Cure Corporation, the owner of the cited patent, has not yet been filed in the United States Patent and Trademark Office. As such, a Terminal Disclaimer, disclaiming the term of any patent issuing on the present application beyond the term of U.S. Patent No. 6,692,565 will be filed prior to the payment of the Issue Fee in this application. Suspension of this rejection is therefore respectfully requested.

Turning to the substantive matters raised, the Examiner rejected Claims 1-27 under 35 U.S.C. §102(a, b, or e) as being anticipated by Price et al. '404, Tanner '785 or '976, Tucker et al. '208, Zatsepin et al., GB 1122210 (Heilman-abstract only), Bozhenov et al., Ponovarev et al., Aristov et al. (SU 1016342-abstract only), IN 162194 (Saboo), or Sirazhiddinov et al. (SU 1539178-abstract only). The Examiner also rejected Claims 1-27 under 35 U.S.C. § 103(a) as being unpatentable over Price et al. '404, Tanner '785 or '976, Tucker et al. '208, Zatsepin et al., GB 1122210 (Heilman-abstract only), Bozhenov et al., Ponovarev et al., Aristov et al. (SU 1016342-abstract only), IN 162194 (Saboo), or Sirazhiddinov et al. (SU 1539178-abstract only) alone or in view of Johansen Jr. et al. '315 or '665. Applicants respectfully request reconsideration of the amended claims and removal of these rejections.

In this regard, applicants have amended independent claims 1, 9 and 10 of the present invention to include the limitation that the inert filler comprises up to 100 weight percent of a man made pigmented inert filler, wherein the man made pigmented inert filler will maintain at least 60% of its color after being immersed in concentrated hydrochloric acid for forty-eight hours and at least 60% of its color after being immersed in a 6 percent sodium hypochlorite solution for forty-eight hours. Support for the amendments is found in original claims 3, 12 and 22, which have now been cancelled.

Applicants urge that the prior art relied upon by the examiner fails to disclose, teach or suggest a cement composition comprising a colored cement produced from clinkers formed with pigment prior to sintering and an inert filler comprising up to 100

weight percent of a man made pigmented inert filler. This is especially true wherein the man made pigmented inert filler is claimed to maintain at least 60% of its color after being immersed in concentrated hydrochloric acid for forty-eight hours and at least 60% of its color after being immersed in a 6 percent sodium hypochlorite solution for forty-eight hours, to impart lasting color.

Not only is the combination of these elements absent from the cited prior art, it is a teaching away wherein it has previously been taught only to use one or the other of a colored cement or a colored inert filler to derive a colored cement composition. The present invention, however, obtains improved results, with better and lasting color, through the use of the combination.

Due to the deficiency of the prior art, claims 1, 2, 4-11, 13-15, 17-21 and 23-27 are patentable over the cited references.

Turning to claim 16, this claim is directed to a method for preparing a colored cement composition including the mixing of two or more portions of cement produced from clinkers formed with pigment prior to sintering. Because there is no disclosure or suggestion of using such components in the forming of a wide variety of colored cements from a limited number of colored portions, using a grid to determine the colors of the cement portions. As such, claim 16 is believed to be independently patentable.

As for the formal matters raised in the Office Action, the Examiner rejected claims 1-27 under 35 U.S.C. § 112, second paragraph, as failing to set forth the subject matter that applicants regard as their invention. Applicant has adopted most all of the Examiner's suggestions in this regard. The one item that has not been changed is the use of "superhydrophobic" in the claims, which refers to a high degree of hydrophobic characteristic.

Finally, applicants note that the Examiner has not considered various references raised in applicants' Information Disclosure Statement filed on July 15, 2004, apparently because the references were missing from the submission. In keeping, applicant submits herewith a Supplemental Disclosure Statement listing and including the references

Group Art Unit: 1755
Serial No.: 10/776,958
Filed: May 16, 2003

stricken from the Information Disclosure Statement filed on July 15, 2004. Applicants request consideration of these references and regret any inconvenience caused.

In light of the foregoing, applicant respectfully submits that the pending claims of the present application are in proper form for allowance. Favorable consideration and early allowance are therefore respectfully requested and earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kenneth F. Florek', with a long horizontal line extending to the right.

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